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"Now these great ancients have been, time out of mind, the teachers of the civilized world. They form a common bond, which unites the cultivated minds of all nations and ages together. He who cuts himself off from the classics, excludes himself from a world of delightful associations with the best minds. He fails to become a member of the great society of scholars; he is an alien from the great community of letters. He may be a learned man; he may have all the treasures of science at his command; he may speak the modern languages with facility; but if he have not imbued his mind with at least a tincture of classical taste, he will inevitably feel that a great defect exists in his intellectual culture." — pp. iv — vii.

- ART. IX.—1. *Case of the Somers Mutiny. Defence of Alexander Slidell Mackenzie, Commander of the U. S. Brig Somers, before the Court-Martial held at the Navy-Yard, Brookline.* New York: Tribune Office, 160 Nassau Street. 1843. 8vo. pp. 30.
2. *History of the Mutiny at Spithead and the Nore, with an Inquiry into its Origin and Treatment; and Suggestions for the Prevention of future Discontent in the Royal Navy.* [Family Library, No. LXXX]. London: Printed for Thomas Tegg, 73 Cheapside, 1842.

THE highest crime known to the law is treason; it is higher than other crimes, because it draws in its train the perpetration of all others. It is an endeavour to overturn the government of the country. To accomplish its end, it unlooses the bands of social order, it subverts the authority of law, and inflames the worst passions of men. It is wise, therefore, for nations to guard against this crime, by jealous laws and stern punishments. In earlier times, the allegiance of the subject was confirmed by a sort of political sacrament. Our master poet has finely expressed the sentiment of his age, when he makes Richard the Second say,

"Not all the water in the rough rude sea
Can wash the balm from an anointed king."

To his sovereign every subject vowed "truth and faith to

bear of life and limb and terrene honor, and not to know or hear of any ill intended him without defending him therefrom." The terrible penalty affixed to a violation of this oath was a token of the enormity of the offence, and a warning against its commission. And though in our day the heads of traitors are no longer suffered to bleach at Temple Bar, nor are the four quarters of their bodies nailed over the gates of cities, still the crime of treason continues to be hateful in the eyes of the law.

On the sea and in the narrow confines of a ship, the crime of mutiny corresponds in enormity, as in its general character, with treason. It is an endeavour to overturn the government of the ship, which is a portion of the floating sovereignty of the country. Its success involves the lives of the officers, and desecrates the flag which all are sworn to guard. Murder and piracy follow in its train. The ship, which sailed with the commission of the Government in search of undiscovered lands, in the hope of extending our knowledge of the face of the globe and of enlarging the domains of science, or, perhaps, in pursuit of the public enemies, is suddenly arrested in its course, not by any external arm, and the hopes and expectations hanging upon her voyage are blasted. It is well for the honor of navigation that its annals are blotted by so few instances of this crime.

Could we summon Christopher Columbus from his tomb, by the side of the grand altar of the cathedral of Havana, where his remains have at last been allowed to repose, he might disclose to us, how, for a moment, even his magnanimous soul quailed before the mutinous voices of his crew, calling upon him to abandon the voyage, which, in its successful termination, gave to the kingdoms of Castile and Aragon a new world. We read of the anxious nights which he passed, while the seamen gathered together in the retired parts of the ship, at first in little knots of two and three, which gradually increased and became formidable, plotting the overthrow of the authority of the Admiral. And, even after the flights of small birds were seen, and the fresh green herbage floated by, the mutiny seems to have prevailed, threatening disastrous results, till that eventful night when the cry of "Land" from the *Pinta* announced the great discovery on which the intrepid navigator had staked the fortunes of his voyage.

A brief sketch of the most remarkable mutinies which disfigure the history of the British navy will prepare us for the consideration of the melancholy event of the *Somers*, which has occupied for so long a time so much of the public mind. From this survey we shall learn how swiftly the passions of men sweep them into crime, and how overwhelming the sudden and unexpected mutiny may become, as without any warning the hot lava descends the mountain side, carrying with it destruction and death. It may teach us further, that the commander cannot be too wakeful in his care to preserve his ship, and that his duty to the flag under which he sails, and to the crew that remain loyal, may impose upon him stern necessities which would not arise in the peaceful course of an ordinary voyage. We will add, that, while we are far from referring to the experience of the past with absolute and exclusive confidence, as a guide for our conduct, still we cannot hesitate to draw from it most valuable lessons.

We begin with the mutiny of the *Bounty*, an incident which is connected in various ways with circumstances abounding in interest, in romance, and in instruction. This ship had been fitted out under the direction of the British Government, for the purpose of introducing the bread-fruit tree from the islands of the Pacific Ocean to the West Indies. Through the recommendation of the amiable Sir Joseph Banks, it was placed under the command of Lieutenant Bligh, who had been with Captain Cook. Her burden was about two hundred and fifteen tons, and her muster consisted of one lieutenant, who was commanding officer, one master, three warrant officers, one surgeon, two master's mates, two midshipmen, and thirty-four petty officers and seamen, making, in all, fifty-four, to whom were added two skilful and careful men, who were to have the management of the plants. On the 23d of December, 1787, the ship sailed from Spithead, and arrived at Otaheite on the 26th of October, of the next year. There she remained till the 4th of April, 1789, receiving the plants which were the object of her voyage, while her crew were lapped in indulgence, afforded by the warm climate and the gentle natives. On the 27th of April, she was between the islands of Tofua and Kotoo. Thus far, the voyage had been one of uninterrupted prosperity.

"A very different scene," says Bligh, in his spirited journal, "was now to be experienced. A conspiracy had been formed which was to render all our past labor productive only of extreme misery and distress. *The means had been concerted and prepared with so much secrecy and circumspection, that no one circumstance appeared to occasion the smallest suspicion of the impending calamity,* the result of an act of piracy the most consummate and atrocious that was probably ever committed. . . . On leaving the deck, I gave directions for the course to be steered during the night. The master had the first watch, the gunner the middle watch, and Mr. Christian the morning watch. This was the turn of duty for the night. Just before sun-rising on Tuesday, the 28th, *while I was yet asleep*, Mr. Christian, officer of the watch, Charles Churchill, ship's corporal, John Mills, gunner's mate, and Thomas Beckett, seaman, came into my cabin, and, seizing me, tied my hands with a cord behind my back, threatening me with instant death if I spoke or made the least noise. I called, however, as loud as I could, in the hopes of assistance; but they had already secured the officers who were not of their party, by placing sentinels at their doors."

With his hands tied, and the chief mutineer pointing a bayonet at his breast, Captain Bligh was hurried into the launch of the ship, in company with eighteen of his officers and crew. The mutiny assumed such instant strength, that all his efforts and exhortations were ineffectual to regain the control of the ship, and he was at length cast adrift on the open sea. "The secrecy of this mutiny," says Bligh, in another part of his journal, "is beyond all conception. Thirteen of the party, who were with me, had always lived forward among the seamen; yet neither they, nor the messmates of Christian, Stewart, Heyward, and Young, [officers who remained with the mutinous crew,] *had ever observed any circumstance that made them in the least suspect what was going on.* To such a close-planned act of villainy, my mind being entirely free from any suspicion, it is not wonderful that I fell a sacrifice."

It appears from the minutes of the court-martial, which was afterwards held in England on some of the offenders, that the mutiny was not strictly the result of a conspiracy. The whole affair was planned and executed between the hours of four and eight o'clock on the morning of the 28th of April, when Christian had the watch on deck. Sore with wrongs fancied or real, which he had received from his

commander, he had formed the idea of quitting the ship. Being called from a half-hour's disturbed sleep, in order to take charge of the deck, finding the two mates of the watch asleep, his youthful brain warm with the remembrance of the harshness of his commander, who was now sleeping unconscious of danger, the ship far away from her home, on untried seas, amid islands filled with allurements to the seaman, and now completely in his power, — with a sudden impulse he darted down the fore-hatchway, got possession of the keys of the arm-chest, and made the hazardous experiment of arming such of the men as he thought he could trust, and in a few hours overturned the supreme authority of the ship, to become a pirate.

It would be beside our purpose to follow the interesting story of the fates of the two different parties, — the commander and his companions, in their small open boat at the mercy of the waves, with starvation staring ghastly in their faces, for the space of forty-one days, during which they sailed a distance of 3618 nautical miles ; or the more unfortunate mutineers, with the ample comforts of a spacious ship, over which they had complete control, yet condemned to renounce the delights of country and home, and to be wanderers and fugitives on the face of the earth, with the brand of piracy on their foreheads.*

But the perilous voyage in the open boat furnishes an incident illustrative of the character of mutineers. It seems that, among this small number, bound together by close companionship in danger, the spirit of discord appeared, only to be arrested by the most energetic conduct of the commander. At one moment, it was on the point of de-

* The history of the miraculous navigation of Captain Bligh in the open boat is given in his "Journal." The principal parts of this are reproduced in an interesting little book on the *Eventful History of the Mutiny of the Bounty*, first published in the London Family Library, and afterwards, with omissions and modifications, "to render it more acceptable to the American public," in Harper's Family Library. In this volume, the reader may follow the fate of the mutineers, torn by intestine feuds, thinned by desertion, finally establishing themselves on one of Pitcairn's Islands, off the common track of ships in those seas, and there founding a little colony, in which, after deeds of violence and bloodshed, piety and sound morals seem, at last, to have found a home. The discovery of the descendants of these mutineers, after a lapse of time which had almost effaced the memory of the crime of their fathers, is one of the most interesting incidents in the history of navigation. It attracted the attention of Byron, who borrowed from it some of the topics of "The Island."

veloping itself in open and successful mutiny. The Journal of Captain Bligh describes it as follows :

“ The carpenter (Purcell) began to be insolent to a high degree, and at last told me, with a mutinous aspect, he was as good a man as I was. I did not just now see where this was to end ; I, therefore, determined to strike a final blow at it, and either to preserve my command, or die in the attempt ; and, taking hold of a cutlass, I ordered the rascal to take hold of another and defend himself, when he called out, that I was going to kill him, and began to make concessions. I was now only assisted by Mr. Nelson ; and the master (Fryer) very deliberately called out to the boatswain, to put me under an arrest, and was stirring up a greater disturbance, when I declared, if he interfered when I was in the execution of my duty to preserve order and regularity, and that in consequence any tumult arose, *I would certainly put him to death the first person.* This had a proper effect on this man, and he now assured me, that, on the contrary, I might rely on him to support my orders and directions for the future. This is the outline of a tumult that lasted about a quarter of an hour.”

It appears, from the language employed by the commander, that he would not have hesitated to resort to the most summary means to sustain the command of his little boat.

But the extent to which the power of mutiny may go was more fully seen in the terrible troubles of the English fleet at Spithead, and afterwards at the Nore. Perhaps no event during the reign of George the Third seemed, for a while, more to endanger the empire, or threw the people into a deeper consternation. The wooden walls of England appeared to rock to their foundation, and the defences against the public enemy to be overturned. The King remained firm, but anxious ; while Parliament was in a state of fearful suspense, as if some great calamity impended over the land. These mutinies had a not unnatural origin in the shameful nature of the provisions which were supplied to the navy, in the injustice of impressment, in the hardships of the service, and the inadequate compensation which it received. The evil spirit first made itself manifest in the renowned Channel Fleet, under the command of Lord Howe, which was then fresh from the memorable victory of the 1st of June, 1794, and was composed of the largest, best-

manned, and what were deemed the finest, ships in the British navy,— fit bulwarks to the coasts of England against invasion. The seamen, by anonymous letters and round-robbins, made their grievances known to Lord Howe, whom they called their “father”; but his Lordship, accustomed to the stern laws of war, seemed to look with indifference, if not contempt, on these informal expressions of discontent. At length, on the 15th of April, when the signal was made for the fleet to weigh anchor, the *Queen Charlotte*, the flag-ship, notorious for the laxity of discipline and the turbulence of the crew, manned her fore-shrouds and gave three cheers, an example which was immediately followed by the rest of the fleet. A deputation of four seamen from each ship assembled on board the *Queen Charlotte*, to determine the steps most suitable to the emergency, and to preside over the mutiny. A captain from among themselves was appointed on the forecastle of each ship to keep watch, and to assert the power of the committee. The marines were disarmed, and the magazines seized. The officers were not allowed to go on shore, but were detained on board. Indeed, the admiral retained command of the fleet, with one restriction only,—that he should not put to sea until the seamen were satisfied.

After a correspondence between the Lords of the Admiralty and the delegates of the seamen, their demands were conceded. They next resolved to hold their authority until the King’s pardon was granted. Proclamation of pardon was then made to the fleet. A bill was hurried through Parliament, passing through all its stages in a single night, providing for the increase of the seamen’s pay; and Lord Howe was charged with extraordinary powers by the King to compose the alarming troubles. By the influence of his great name, by gentleness, and, more than all, by admitting, to a certain extent, the justice of their claims, the seamen were won back to duty; and, on the 17th of May, with renewed alacrity and good feeling, this powerful fleet put to sea in search of the enemies of their country.

While the mutiny at Spithead was dying away, a flame broke out in the fleet of the Nore, which was destined to rage with a wilder and more ungovernable fury. It found its first vent on board the flag-ship, the *Sandwich*. On the signal being given to prepare for sailing, the crew ascended

the rigging and gave three cheers, in token that they threw off the yoke of obedience to their officers, and declared themselves, for the time being, their own masters. They then held a council together, and appointed delegates for the government of the ship. The example of the *Sandwich* was followed throughout the fleet, and the authority of the officers completely overthrown. A manifesto, setting forth their grievances, was signed by the delegates of twenty ships of war ; and this powerful armament, to which were soon added other ships from the North sea, was put in an attitude of defence, being moored in two lines of battle. A committee of delegates occupied the Admiral's cabin in the flag-ship ; their table was covered with a union jack ; a can of beer was placed on it ; the members sat with their hats on, and ordered such captains as were summoned before them to be uncovered.

These extraordinary proceedings were sudden and unexpected. The author of the “*Naval History of Great Britain*,”* who was a lieutenant on board one of the ships that joined in the mutiny, and officer of the watch when it broke out, says :

“On board the *Agamemnon* *little suspicion was entertained of an intention to mutiny*, till the people had dined, when they were called by the boatswain's mate ; but none appearing, *a petty officer came and gave information, that the ship's company had retreated to the fore part of the lower deck, and refused to come up*. The captain, being acquainted with this, desired the officer of the watch to accompany him down to speak to them. They went forward on the lower deck, and found the men had made a barricade of hammocks from one side of the ship to the other, just before the fore-hatchway, and had left an embrasure on each side, through which they had pointed two twenty-four pounders. These they had loaded, and threatened to fire in case of resistance on the part of the officers.”

The organization on board the fleet was perfect. Rules

* *The Naval History of Great Britain from the Year 1789 to 1822*, by Edward Pelham Brenton, Esq., Captain in the Royal Navy, Vol. II. p. 423. “A composition,” says the author of *The History of the Mutiny at Spithead and the Nore*, (p. 223,) “of neither weight nor value, and the gossiping nature of which only acquires an interest, in the particular case of the mutiny, from the fact of its author's having been a prisoner in the fleet at the time.” The historian of the mutiny is the friend of the seamen, and writes almost with the spirit of a mutineer.

and orders were issued by the delegates, for the government of the fleet. The general superintendence and command were in the hands of Richard Parker, a supernumerary of the *Sandwich*, who had been impressed at —, and who was sometimes styled Admiral of the fleet, and at other times President. In the mean time, the Government took the most energetic steps. A proclamation was issued, offering pardon to all who should return to their duty. The coast was put in a state of defence. Sheerness was evacuated by its inhabitants, in order to afford accommodation for the garrison ; troops poured in from all sides ; a chain was thrown across the mouth of the harbour to close the entrance to the Medway ; on Mr. Sheridan's suggestion, all the buoys and beacons were removed from the three channels leading to the Thames, so as to deprive the fleet of the customary guides in navigation ; red-hot balls were ready to be used at a moment's notice ; and the mutineers were publicly and officially branded as pirates and rebels.

The rebellious seamen now resorted to extreme measures. They put the mouth of the Thames, the avenue to the great commercial mart of the world, under blockade. The trade of the empire seemed to be in their hands ; the argosies of India, and the heavy-laden merchantmen from every land, a forest of masts, were held spell-bound by their authority. A panic seized the nation ; the three *per cent.* consols fell to, and remained at, forty-five and a half. Various fears occupied the public mind. The first was, lest the fleet should be surrendered into the hands of the French or the Dutch ; the second, lest an attack should be directed against the arsenals and forts that lined the Thames and the Medway ; the last, and perhaps the most urgent, lest the enemy's fleet should put to sea, calculating upon the disaffection of the seamen, and meet with no resistance. But the bad luck which waits on rebellion speedily ensued. Distrust and apprehension of consequences began to work a way towards reconciliation and submission. Several of the ships, braving the fire of the whole fleet, escaped, not without considerable damage, from the unholy confederacy. The signal for sailing was made by Parker, but not obeyed. No hand moved to weigh anchor or unfurl the sails. The fleet remained stationary, and this formidable mutiny, which seemed for a while to darken the whole land, gradually crumbled in

pieces. Ship after ship floated into the harbour, to receive the King's pardon. A reward was offered for the apprehension of Parker. On the morning of June 14th, the white flag, the sign of unconditional submission, replaced the red colors of rebellion, in nearly all the ships. A court-martial was speedily constituted, under whose decrees Parker, and many of his associates, suffered at the yard-arm. On the 11th of October of this year, Admiral Duncan led into action the lately mutinous fleet of the North Sea, and the victory of Camperdown entitled the seamen again to the gratitude of the country.

But the spirit of mutiny did not keep close by the shores of England. It crossed the sea, and entered the fleet occupied in the blockade of Cadiz, under the energetic command of Lord St. Vincent. It was fortunate for the British arms, that the double contest, with the public enemies without and the seamen within, fell to a commander of his intrepid character and great resources. One of the earliest and most melancholy manifestations of insubordination took place in the *Kingfisher*, commanded by Captain John Maitland. The crew refused to weigh anchor. The captain immediately singled out one of the ringleaders, and ordered him to be seized up for punishment ; but when this had been done, one of the petty officers went deliberately to the grating and cut the cords to release the prisoner. On this, Maitland drew his dirk, and laid the offender dead, or mortally wounded, on the deck. He also severely wounded two other men. He was well supported by his officers, and the mutiny was instantly quelled. He demanded a court-martial on himself for having put the man to death. It was granted, and he was acquitted ; but admonished to be more temperate in future.*

Other executions followed ; and the temper of the Admiral, as well as the magnitude of the emergency, may be estimated by his order to Sir William Parker, which we quote at length.

* It is said, that Lord St. Vincent did not participate in the feeling which dictated the admonition, and that he invited the members of the court-martial to dinner, and after the cloth was removed, gave as a toast, “ Maitland's cure.” This circumstance is given on the authority of his biographer (Brenton's *Life of St. Vincent*, Vol. I. 359) ; but it has been doubted, (London Quarterly Review, Vol. LXII. p. 439,) and, for the sake of humanity and decency, we trust that it does not darken the name of that great Admiral.

[SECRET.]

"Sir,— It being necessary to take every precaution against any attempt to defeat or delay the carrying of the sentence of the court-martial into execution on board the *Defence* this morning, I have ordered all the launches in the fleet fitted with caronades to have them mounted, and to hold them in readiness at a moment's warning; and should any resistance be made to carrying the sentence of the law into execution, (of which immediate notice will be given to you,) it is my directions that you assume the command of them, taking the captains of your division in their barges to your assistance, and *that you fire into that part of his Majesty's ship Defence where the persons resisting or opposing obedience to lawful commands may dispose of themselves, and continue your fire until they submit.*"

"St. VINCENT.

"To Sir William Parker, bar't."

From these convulsions overmastering fleets, we pass to an outrage of a different character, which stands out as a conspicuous instance of the suddenness with which the force of mutiny may subdue a ship, and also of the retribution which is sure to fall upon the miserable offenders from the unsleeping power of the law. The *Hermione*, a frigate of the British navy, was cruising, on the evening of the 21st of September, 1797, off the west end of Porto Rico. Her commander, Captain Pigott, was a rough officer, whose orders seemed to be inspired by the worst spirit of the forecastle, unchastened by the refinement of the quarter-deck, or the humanity which is the highest grace alike of the sailor and soldier. Some of the men were reefing the topsails, when he called out that he would flog the last man off' the mizzen-topsail-yard. The poor sailors understood the character of their commander, and felt that this was not an empty threat, although the chance of punishment would naturally fall on the outermost, and consequently the most exposed to danger. Each resolved to escape the threatened punishment, and two of them, who, from their position outside, could not reach the rigging, made a spring to get over their comrades. They missed their hold, fell on the quarter-deck, and were killed. This being represented to the captain, he is said to have made answer, "Throw the lubbers overboard."*

* This incident is given on the authority of Brenton's *Naval History*, Vol. II. p. 436. The other volume from which we draw the account of

In little more than twenty-four hours after this event, the mutiny broke out. Double-headed shot were thrown about the ship, and other disorderly acts committed. The first lieutenant went below to inquire into the cause of the disturbance. He was knocked down with a tomahawk, his throat cut, and his body thrown overboard. The captain had already retired to sleep, unconscious of danger. His fate we give in the words of a witness in court. “Hearing a noise upon deck, he immediately ran out of his cabin, when, being badly and repeatedly wounded, he was at length obliged to return. He had reached his cabin and was sitting on a couch, faint with the loss of blood, when four men entered with bayonets fixed. Crawley headed them. Captain Pigott, weak as he was, held out his dirk, and kept them off. They seemed for a moment appalled by the sight of their commander, when Crawley exclaimed, ‘What! four against one, and yet afraid? Here goes, then,’ and buried his bayonet in the body of Captain Pigott. *He was followed by the others, who with their bayonets thrust him through the port, and he was heard to speak as he went astern.*” The second lieutenant was now dragged across the deck, stretching out his hands and crying, “Mercy! mercy!” After receiving many wounds, he was drawn up the ladder by the hair of his head, to be thrown overboard. It was then that his own servant rushed upon him with a hatchet in his hand, crying out, “Let me have a cut at him”; on saying which he dreadfully wounded his own master. The lieutenant of marines, though sick in his cabin, was taken and thrown overboard. The other officers, nine in number, were cut to pieces.

“Confusion now had made his master-piece!”

The flag of St. George descended from the mast-head; and the mutineers took possession of the ship, which they conducted to the Spanish port of La Guaira, and surrendered to the government, Spain being at that time at war with England.

But the doom of the pirate is inevitable. He is pursued,

this mutiny, says nothing with regard to the words used by the captain. *Annual Register*, Vol. XL. p. 4; Vol. XLII. p. 27. Such inhuman conduct is stranger than the fictitious, and apparently improbable scenes, by which Smollett has held the naval service up to detestation in “Roderick Random.”

as if by the inexorable Fate of the ancients. There is no recess of the ocean, no pathway on the waters, where he can find shelter. The arm of modern civilization is more searching even than that of Rome, in the days of her greatest power, when the unfortunate victim sought in vain, on the distant shores of the Caspian, or, far away from the sun, in Britain, to hide himself from the vengeance of the Emperor. The law of the civilized world treats the pirate as the common enemy of men. It fastens on him a wolf's head, and he is hunted to the uttermost parts of the sea. One by one, or in small numbers together, the crew of the *Hermione* fell into the hands of the government of their country, and were brought to trial. Some were executed at Portsmouth; others in the ports of St. Domingo; and the remains of many for a long time swung from gibbets on the sandy keys at the entrance of Port Royal harbour, in the island of Jamaica. No long period elapsed, before the frigate, which had been the scene of this appalling outrage, by a remarkable act of naval hardihood, was cut out of the harbour of Porto Cavallo, where she was lying under the shelter of two hundred pieces of cannon mounted on the batteries, and again restored to the British navy under the name of the *Retribution*.* Afterwards, at Portsmouth, some of her former crew, convicted of piracy, suffered death at her yard-arm.

The melancholy history of the *Hermione* does not close the catalogue of these misfortunes in the British navy. The fate of the *Lady Jane Shore*, a transport ship, in 1798, is another illustration of the suddenness with which the doom of blood may descend upon the unfortunate officers of a ship. When four days from Rio de Janeiro, a part of the crew rose in the night on the second mate, who was on watch. He found resistance to so many armed men to be in vain, and submitted in order to save his own life. The mutineers then entered the cabin of the chief mate, and murdered him in the most savage manner, cutting off his head. They proceeded to the round-house, where the captain was, and demanded admission, which he refused, and, on their further persisting, fired a pistol at them through the door. They instantly broke the door in pieces and murdered him, it is said, with every circumstance of cruelty. Eleven persons

* *Annual Register*, Vol. XLII. p. 69.

were put into the long-boat, with a compass, and turned adrift ; but they arrived safe at Rio de Janeiro.* Of the subsequent fate of these mutineers, we do not find any trace. We cannot doubt, however, that they suffered the judgment of law for their crime.

The reader, who has followed us thus far, will have suspended full of horrors ; and we have not the heart, if the materials were within our reach, to add to the disagreeable banquet. We do not doubt that many more instances might be produced, which would throw light on the origin and character of mutinies. Thus we find in a periodical publication of high authority,† under the chronicle of intelligence for the year 1800, this brief note : “ With great concern we have to notice a mutiny on board his Majesty’s ship *Danaë*, which has been carried into Brest by the villains who obtained possession of her.” Here was another national ship wrested from Government by the parricidal hands of its own sons. The melancholy fate of the officers we are left to imagine. Were they butchered and thrown into the sea ? were they turned adrift in a small boat with a scanty supply of food ? or were they confined as prisoners in the ship, which, under a commission from their sovereign, they had once commanded, and, as prisoners, delivered to the enemies of their country ?

The instincts of our nature cannot fail to be aroused by the recital of such catastrophes. We feel for the unhappy sufferers, suddenly overcome by a cruel fate, which they could not foresee, and which they were impotent to control. We would offer them our sympathy ; but they have, perhaps, passed where that cannot follow. It is, therefore, in accordance with the feelings of humanity, that, by the law and usage of the nations of the earth, mutiny is held in the greatest abhorrence. The laws of Solon stamped all who participated in it as *infamous*. By the laws of the modern world it is punished with death. The articles of war of the United States ‡ expressly declare : “ If any

* *Annual Register*, Vol. XL. p. 60.

† *Ibid.*, Vol. XLII. p. 6.

‡ Act of Congress, 23d of April, 1800, § 1, article 13th. By the act of 19th of May, 1832, certain commissioners were authorized to revise and enlarge the rules and regulations of the naval service, with the view “to adapt them to the present and future exigencies of this important arm of national defence.” We are not aware that any report has been made by the

person in the navy shall make, or attempt to make, any mutinous assembly, he shall, on conviction thereof by a court-martial, suffer death." This provision was borrowed, almost in its very words, from the articles of war established by the British Parliament as long ago as 1749. No discretion is left with the court-martial. There is but one punishment, and that is death.

In the course of our survey, we have already found at least one instance in which the officer did not await the tardy results of a court-martial, but took upon himself the responsibility of inflicting, without any resort to legal process, the doom appointed by the law. The case of Lord Camelford, which we shall now present, recognizes the right of the officer to act for himself in such an emergency, even where the circumstances were by no means of a very pressing character. The following account is taken from the Annual Register for 1798.

"Lieutenant Peterson, of his Majesty's ship *Perdrix*, has been lately shot by Lord Camelford. The circumstances of this new catastrophe in our annals of naval transactions are as follows: Lord Camelford has the rank of master and commander, and has the command of his Majesty's sloop of war, the *Favourite*. The *Favourite* and *Perdrix* were lying in English Harbour, on Saturday, the 15th of January, at which time Captain Fahie, of the *Perdrix*, was absent in St. Kitts. Mr. Peterson was first lieutenant of the *Perdrix*. Lord Camelford, as being commanding officer at that time in English Harbour, ordered Lieutenant Peterson to row guard in the harbour for that night. This order Lieutenant Peterson refused to obey, Captain Fahie being Lord Camelford's senior officer, and his Lordship having, therefore, in his opinion, no right to give the order. Both ships were hauled alongside the dock-yard, repairing, and the companies of each ship collected round the party in the dock-yard, where the altercation began. Many words passed between the lieutenant and his Lordship, but still Mr. Peterson refused to obey. About twelve

commissioners, so that our navy is still governed by the old articles of 1800. These are copied in many most important respects, often even in the language, from the British articles of 1749. The rigor of the latter, which is not invariably preserved in ours, has excited the warmest indignation in a British writer; and complaint is made that these articles, though framed as far back as 1749, remain unaltered to this day. (*History of the Mutiny at Spithead and the Nore*, p. 305.) We trust that the delay of our commissioners will not justify such complaints in the naval service of the United States.

of the crew of the *Perdrix* came to the spot armed, in a few minutes afterwards ; and Lord Camelford brought six of his marines to the place, armed also. Mr. Peterson now drew up his men in a line, and he stood at their head with his sword by his side ; Lord Camelford also drew up his six men in a line fronting the *Perdrix's* people, and distant about four yards. His Lordship then quitted the place for about two minutes, and returned with a pistol in his hand, which he had borrowed of an officer of the yard. Mr. Peterson was standing at the head of his men, as before, with his sword drawn, the point of it resting on the ground ; in this position Lord Camelford went up to him with his pistol in his hand, and said, ‘Do you still persist in refusing to obey my orders ?’ To which the lieutenant answered, ‘Yes, I do refuse.’ On which Lord Camelford immediately clapped the pistol to his right breast, and fired. Mr. Peterson fell on his back immediately, and never spoke a word more, or moved, as the ball went entirely through his body. His corpse was then carried into the capstan-house, where Lord Camelford attended, and examined the body. The armed part of the crews of the two ships quietly went aboard their own ships ; and Lord Camelford gave himself up as a prisoner to Captain Matson of the *Beaver*, sloop of war, in which ship he was carried up to the admiral, in Fort Royal Bay, and there tried and acquitted. His Lordship gave in a very admirably written defence, containing eighteen pages, very closely written.” — Vol. xl. pp. 10, 11.

The court-martial was assembled on board the ship *Invincible*, in Fort Royal Bay, Martinique, the 20th of January, 1798, and held by adjournment every day afterwards, Sunday excepted, until the 25th. From the length of time occupied, so unusual in the despatch of English court-martials, it would seem that the case received a proper share of attention. The court was composed of five officers of the rank of captain. In their sentence they say, that,

“ Having heard the whole of the evidence adduced on the occasion, and what the prisoner had to offer in his defence, and maturely and deliberately weighed and considered the same, and being fully sensible of the necessity of prompt measures in cases of mutiny, they are unanimously of opinion, that the very extraordinary and manifest disobedience of Lieutenant Peterson, both before and at the instant of his death, to the lawful orders of Lord Camelford, the senior officer at English Harbour at that time, and the violent measures taken by Lieutenant Peterson to resist the same, by arming the *Perdrix's* ship's company, were

acts of mutiny highly injurious to his Majesty's service. The court do, therefore, unanimously adjudge that the Right Honorable Lord Camelford be honorably acquitted, and *he is hereby unanimously and honorably acquitted accordingly.*"*

In the early history of our own navy, we find an instance of an emergency which did not brook the law's delay. It occurred on board of the ship of that brave commander, who was first distinguished in the naval service of his country, and at a later period as its representative at a foreign court, and to whose memory the funeral gun and the flag at half-mast have only recently rendered the last naval honors. We give the narrative of this transaction from an authentic source.†

" While the *Essex* was lying at the Marquesas Islands, recruiting and refreshing her crew from one of the long and arduous cruises in the Pacific, Commodore Porter was informed, through

* It is to the credit of the author of the *Naval History of England*, (Vol. II. pp. 439, 440,) that he was not blinded by the rank of the offender in this case, as the court-martial seems to have been. The necessity of prompt measures, in the case of mutiny, is the ground-work of the sentence. This cannot be exaggerated. But was the conduct of the noble commander free from the imputation of malice and passion? Were the circumstances, on this occasion, of the pressing and overruling character to justify him in anticipating the course of the law? Did there appear to be any imminent danger to himself or his crew, or the honor of his flag? This instance of summary punishment, on grounds apparently insufficient, does not stand alone in the annals of the British navy. It is said, that a commander, whose services were of sufficient dignity to be rewarded with a peerage, took away the life of a man in the following manner. His crew had come aft upon the quarter-deck to complain of the badness of the wine, which at this time was served out on board the fleet, when rum, which the sailors much preferred, was not procurable. After the first or second complaint, the officer hailed another ship in the same fleet, to know if any complaint had been made of their wine, which had been served out at the same time? The answer was, No. On the following day, one of the crew appeared on the quarter-deck to repeat the complaint. *The commander drew his sword and ran the complainant through the body!* He had suddenly found that he was guilty of the crime of mutiny. We do not wonder at the bitterness with which the writer on whose authority we give this outrage (*History of the Mutiny at Spithead and the Nore*, p. 152) alludes to such a violation of law and of humanity. With such precedents in their service, it is not difficult to infer the sense of the British navy, the navy of the largest experience the world has ever seen, with regard to the manner in which the authority of the officers of a ship should be upheld against the slightest approach to mutiny. Like tyranny, "it should be snuffed in the coming breeze."

† It is from the Appendix to the lively volume entitled "*A Gallop among American Scenery, or Sketches of American Scenes and Military Adventure*, by AUGUSTUS E. SILLIMAN." From knowledge within our reach we place implicit confidence in the accuracy of the above narrative.

a servant of one of the officers, that a mutiny had been planned, and was on the eve of consummation ; that it was the intention of the mutineers to rise upon the officers,—take possession of the ship,—and, after having remained as long as they found agreeable at the island, to hoist the black flag and ‘cruise on their own account.’—Having satisfied himself of the truth of the information, Commodore Porter ascended to the quarter-deck, and ordered all the crew to be summoned aft. Waiting till the last man had come from below, he informed them that he understood that a mutiny was on foot, and that he had summoned them for the purpose of inquiring into its truth.—‘Those men who are in favor of standing by the ship and her officers,’ said the commodore, ‘will go over to the starboard side,—those who are against them will remain where they are.’ The crew, to a man, moved over to the starboard side. The ship was still as the grave. Fixing his eyes on them steadily and sternly for a few moments, the commodore said,—‘Robert White,—step out.’ The man obeyed, standing pale and agitated—guilt stamped on every lineament of his countenance—in front of his comrades. The commodore looked at him a moment,—then, seizing a cutlass from the nearest rack, said in a suppressed voice, but in tones so deep that they rung like a knell upon the ears of the guilty among the crew,—‘Villain!—you are the ringleader of this mutiny,—jump overboard!’ The man dropped on his knees, imploring for mercy,—saying that he could not swim. ‘Then drown, you scoundrel!’ said the commodore, springing towards him to cut him down,—‘overboard instantly!—’ and the man jumped over the side of the ship. He then turned to the trembling crew, and addressed them with much feeling,—the tears standing upon his bronzed cheek as he spoke. He asked them what he had done, that his ship should be disgraced by a mutiny. He asked whether he had ever dishonored the flag,—whether he had ever treated them with other than kindness,—whether they had ever been wanting for any thing to their comfort, that discipline and the rules of the service would allow—and which it was in his power to give. At the close of his address, he said,—‘Men!—before I came on deck, I laid a train to the magazine!—and I would have blown all on board into eternity, before my ship should have been disgraced by a successful mutiny,—I never would have survived the dishonor of my ship!—Go to your duty.’ The men were much affected by the commodore’s address, and immediately returned to their duty, showing every sign of contrition. They were a good crew, but had been seduced by the allurements of the islands, and the plausible representations of a villain. That

they did their duty to their flag, it is only necessary to say, that the same crew fought the ship afterwards against the *Phebe* and *Cherub*, in the harbour of Valparaiso, where, though the American flag descended,—it descended in a blaze of glory which will long shine on the pages of history. But mark the sequel of this mutiny,—and let those, who, *in the calm security of their firesides*, are so severe upon the course of conduct pursued by officers in such critical situations, see how much innocent blood would have been saved, if White had been cut down instantly, or hung at the yard-arm. As he went overboard, he succeeded in reaching a canoe floating at a little distance, and paddled ashore. Some few months afterwards, when Lieutenant Gamble of the Marines was at the islands, in charge of one of the large prizes, short-handed and in distress, this same White, at the head of a party of natives, attacked the ship, killed two of the officers and a number of the men, and it was with great difficulty that she was prevented from falling into their hands. The blood of those innocent men, and the lives of two meritorious officers, would have been spared, if the wretch had been put to instant death,—as was the commodore's intention."

pp. 261—264.

We join with this earnest writer in urging all who, in the calm security of their firesides, are disposed to judge ungenerously the conduct of officers placed in circumstances of such emergency, to consider well the consequences of a failure to sustain the command of the ship, and the probable effect of energetic action in securing it in the hands where it rightly belongs. The cases which we have now brought together cannot fail to leave a strong impression on the mind. They teach at least one lesson, which the faithful commander should not forget, except on peril of the highest misfortune. It is, that the outbreak of mutiny may be sudden, unexpected, and overwhelming, even among a crew that has given no previous sign of disaffection. Perhaps we may go further, and draw from them a rule of conduct, which shall vindicate the exercise of the most summary authority in subduing this spirit of evil. The small vapor, hardly perceptible as it first issued from the little box drawn up by the net of the poor fisherman in the "Arabian Nights Entertainments," by degrees rose in the air, and swelled in magnitude as it rose, till it assumed the form of a genie of gigantic proportions, no longer to be restrained within the narrow limits from which it had escaped. Such is the spirit of mutiny;

and woe to the unfortunate commander, who, in a moment of irresolution, or through fear of exercising a power corresponding to the stern necessities of the occasion, allows the small vapor to swell till it stalks like a giant over the ship !

For the present, we leave all the considerations suggested by this historical examination, and hasten to the immediate subject before us. The affair of the *Somers* will stand out conspicuously in the naval history of the country, as well for the singular atrocity of the conception of the mutiny, as from the character of its chief instigator, and the summary and painful way in which it was suppressed. The annals of the world do not afford a more impressive scene than that of the young commander of a small ship, away from his country, at sea, in the exercise of what he believed to be a solemn duty, ordering the execution, at the yard-arm, of a brother officer,* the son of a distinguished Minister of State. At the risk of repeating a more than thrice-told tale, we proceed at once to give a narrative of this event, which we shall make as brief as possible, endeavouring simply to present the facts that are essential to enable us to determine the responsibility of Commander Mackenzie for an act, in many respects, without precedent in naval history.

The *Somers*, a brig of war of the United States, sailed from New York on the 12th of September, 1842, under the command of Commander Alexander Slidell Mackenzie, an officer, who, though not yet arrived at the honors of seniority, had partaken in the toils of the sea, in the service of his country, for nearly thirty years. To a distinguished name in his profession, he joined honors obtained in other fields of exertion ; and the fame of the successful author enhanced the well-deserved reputation of the officer. The brig was small, of two hundred and sixty-six tons by measurement, though so sharply built that she carried only one hundred and twenty ; a very swift sailer, with raking masts, and pierced for fourteen guns, though mounting only ten. Her crew consisted of one hundred and twenty men, of whom twelve were officers, nine ordinary seamen, six lands-

* The language of Livy on a memorable occasion is not inappropriate. *Conspicuus eo, quod paenae capienda ministerium illi imposuit, et qui spectator erat amovendus, eum ipsum fortuna exactorem supplicii dedit.* Lib. II. 5. We intend to apply these words to the unhappy situation of the commander.

men, and the remainder, apprentice boys, between the ages of thirteen and eighteen years. They had nearly all been detached from the receiving ship *North Carolina*, lying at the port of New York, on board of which was the naval school. Holding the rank of midshipman, among the officers was Philip Spencer, son of Mr. Spencer, at that time Secretary of War, and a conspicuous member of the cabinet of President Tyler. It appears, that, before sailing, Commander Mackenzie had heard of previous misconduct on the part of Spencer, which inclined him to look unfavorably upon his character, and to desire his removal from the Somers. On the Brazilian station he had wantonly insulted an English midshipman, in a freak of drunkenness, and been otherwise involved in difficulties, on account of which he was dismissed from the squadron, and incurred the severe censure of the Navy Department. It is said, that, at this time, only the interference of friends and his own promises of amendment saved him from the action of a court-martial, and expulsion from the service. "The circumstance," says Commander Mackenzie, "of his connexion with a high and distinguished officer of the Government, by enhancing, if possible, his baseness, increased my desire to get rid of him. On this point I beg that I may not be misunderstood. I revere authority, and, in this republican country, I regard its exercise as an evidence of genius, intelligence, and virtue. But I have no respect for the base son of an honored father." Subsequent events developed too clearly the wisdom and discretion of the commander, in desiring Spencer's removal. This, however, did not take place, and the brig sailed with seven in the steerage, which was fitted to accommodate only five persons. Her destination was the coast of Africa, where she was to convey despatches to the sloop of war *Vandalia*, and to join that vessel in protecting our commerce from molestation in that quarter.

On her outward passage, as far as Madeira, the usual regularity and order prevailed. The crew appeared to be under good discipline; the rules of the service were rigidly enforced; its exercises, such as firing at targets, and manœuvring the guns, were strictly attended to, and the brig was in as good and effective a condition as could have been expected, seeing that the crew was made up,

to so great an extent, of young apprentices. Spencer did his duty, and was treated by the commander, like the other midshipmen. Perhaps, the commander says, he had reprobred Spencer somewhat less than the others, for slight deviations from the line of duty, because he had little hope of essentially serving one who had proved to be so decidedly his own enemy. It was observed, that he was in the habit of associating very little with the other officers, but was continually intimate with the crew. He was in the habit of joking with them. He seemed to shun with care the company of his superiors, while he courted that of the older boys, and the ordinary seamen of the vessel, giving them occasionally money, and endeavouring to amuse them and attach them to himself. He drew from the purser a large quantity of tobacco and cigars, far more than any other officer, which he distributed among the apprentices and seamen, whose favor he seemed desirous to secure. On the day before leaving New York, he gave money to Small, an ordinary seaman ; on the passage out, he gave money to Cromwell, the boatswain's mate,—at one time fifteen dollars ; and he also corrupted the ward-room steward, and induced him, at different times, to steal brandy, which he drank himself, and distributed among his favorites of the crew.

After the *Somers* stopped at Madeira, on her passage to the coast of Africa, a change seemed to take place in the conduct of the crew, and the influence of Spencer appeared to be gaining an ascendancy. In conversation he often betrayed his desire to have command of a vessel of his own. At the same time, his intimacy with Cromwell, Small, and others of the crew, was observed to increase. His manner towards his messmates became more reserved ; but among the crew he was loud and blasphemous in his abuse of the commander, declaring that it would give him real pleasure to roll that officer overboard from the round-top. This, however, was not known at the time to the commander, in intercourse with whom Spencer was servile to the last degree. Space will not allow us to point out all the germs of the conspiracy which was meditated, and we come at once to its final discovery.

With the purser's steward, James W. Wales, the commander once had a trifling difficulty, which probably led

Spencer to believe that this person could be drawn over to his designs. The attempt to do this resulted in the discovery of the plot. The brig had left Cape Palmas on the eleventh of November, for the United States, intending to stop at St. Thomas, in order to take in a fresh supply of provisions and other necessaries. On the night of the twenty-fifth of November, between six and eight o'clock in the evening, Wales states that he was standing forward by the bitts, when Spencer came up, and, after a few remarks about the weather, requested him to get on top of the booms, as he had something very important to communicate. Wales accordingly, contrary to a regulations of the ship, mounted the booms with him, and, after taking an oath of the most solemn secrecy, which, to his astonishment, was prescribed by Spencer with great seriousness, he obtained from the latter a full account of his plans. According to this account, Spencer was then leagued with about twenty of the brig's company to take the brig, murder all her officers, and enter upon a career of piracy. The plan and stations of the men were arranged in a paper concealed in his cravat. He requested Wales to feel of his neck-handkerchief, who says that there was a rumpling which showed that there was paper in the back part of it. The affray was to be commenced some night when Spencer had the mid-watch. Several of his men would engage in a fight on the forecastle. He was to order them up to the mast, and, under pretence of settling the difficulty, to call Mr. Rogers, the officer of the deck, whom they were to seize, as soon as he came to the gangway, and throw overboard. They would then have the brig in their own possession. The keys of the arm-chest, he said, he could lay his hands on at any moment. This was to be opened and the arms distributed. He was next to station his men at the hatches to prevent any one from coming upon deck, and then to proceed to the cabin and murder the commander with the least noise possible. He was then, with some of his men, to penetrate to the ward-room, and there murder the officers. The officers of the ward-room, he said, had no arms, except the first lieutenant, who had an old cutlass, which he should take care to secure, before the affray commenced. This accomplished, he said he should go on deck, and cause the two after-guns to be shued round, so as to command the vessel from a raking

position. He would then cause all the crew to be called up, and select from them such as would suit his purposes. The remainder, particularly the small boys, he should cause to be thrown overboard, as useless consumers of biscuit. This done, the brig was to proceed to Cape San Antonio, or to the Isle of Pines, and there take on board one who was familiar with their intended business, and who was ready and willing to join them. Then was to commence the career of piracy. Spencer seems to have dwelt with complacency upon the course to be pursued, and the pleasures to be enjoyed. Prizes were to be captured ; and after taking from them whatever would be of use, all on board were to be murdered, except the women reserved for a more brutal purpose, and the ships scuttled, so that no tale of their fate should reach the shore.

It seems, that at this relation Wales was too much astonished to make any reply. Spencer then called up Small, the seaman with whom he had been intimate through the voyage. He addressed him in Spanish ; but Wales could not tell, as he did not understand the language, what they were talking about. Small looked surprised, however, at what was told to him. Spencer then remarked in English, “O, you need not be under any apprehension or fear on his account, as I have sounded him pretty well, and find him one of us.” Small seemed pleased, and remarked that he “was very glad to hear it.” He was then called away about his duty. Before going, Spencer remarked, that he should have the mid-watch that night, and wished to have some further conversation relative to their plans. He desired Small, in the mean time, “to see *that* foretopman,” without naming him. Spencer then made overtures to Wales, and offered, if he would join in the conspiracy, to give him the post of *third* officer in command. He then asked Wales what he thought of the project ; to which the latter replied, thinking it prudent to dissemble in order to gain further information, that he was favorably disposed to it. Spencer remarked, that they would have another interview on the next day, when he would exhibit the plan which he had drawn up. He followed Wales to the gangway, saying, that if he lisped a syllable of what had been communicated to him, he should be murdered, either by Spencer himself, or by other persons engaged in the plot ; that, go where he might, his life would not be worth a straw.

Wales promised secrecy ; but resolved at once to communicate to his commander all that he had heard. He found himself so closely watched by Small and Spencer, that he was foiled in his attempts that night ; but, the next morning, he succeeded in imparting it to the purser, Hieskell, who related it to Lieutenant Gansevoort, by whom it was communicated to the commander. The latter received the communication with great coolness, and expressed doubts of its truth. In his official despatch, he says, that the whole affair seemed to him so monstrous, that he treated it with ridicule. His impression was, that Spencer had been amusing himself and Wales with some mere story of piracy and murder. He directed the lieutenant, however, to keep a careful watch upon Spencer, and to report every thing that appeared suspicious in his movements. At a later period of the day, the lieutenant, who had been an anxious observer of what passed, urged upon the commander the necessity of taking some active measures. The latter still replied, that he wished to do nothing hastily ; that they would keep a sharp look-out, and, when the drum beat for evening quarters, decide what course it was best to pursue.

We cannot fail to notice the judgment and coolness evinced by the commander, on receiving this astounding information. To one familiar, as he was, with naval history, the incidents of former mutinies could not have been unknown ; and he must have seen, in the project of Spencer, many features corresponding with the melancholy events which have already occupied so much of our attention. He could not have forgotten the fate of the officers of the *Bounty*, whose power was overthrown by one man, in the twilight of the morning ; and that of the officers of the *Hermione*, butchered and thrown overboard, and the captain murdered in his cabin.

On the drum beating to quarters, in the presence of all the officers on the quarter-deck, the commander directed the lieutenant to arrest Spencer and place him in irons, ordering, further, that he should be put to instant death, if he was detected in speaking to, or holding communication with, any of the crew. Spencer was searched ; but nothing was found upon him except a few scraps of paper. On searching his locker, however, a razor-case was found, and, inside of it, a piece of white paper, on which were written what ap-

peared to be strange characters, but which proved to be Greek, of which language Spencer had some knowledge.* This paper was read by Midshipman Rogers, and converted into English characters as follows.

“ *Certain* — P. Spencer, Andrews, McKinley, Wales.

“ *Doubtful* — Wilson,* McKie,* Warner,* Green,* Gedney,* Wilzer, Sullivan, Godfrey, Gallia,* Howard.

“ To be kept, *nolens volens* — Sibble, Strumner, Scott, Van Brunt, Smith, Whitmore, Gazeley, Blackman, Waltham, Rodman, Clark, Nevers, Selzer, Corning, Richardson, the Doctor, Guevan.

“ Those marked doubtful, with a cross opposite their names, will probably join before the plot is carried into execution. The remainder marked doubtful will probably join when the thing is done ; if not, they must be forced.

“ Any not marked down who may wish to join after the thing is done, we will pick the best out and dispose of the rest.

“ *Wheel* — McKie.

“ *Arm-chest* — McKinley.

“ *Cabin* — Spencer, Small, Wilson.

“ *Ward-room* — Spencer.

“ *Steerage* — Spencer, Small, Wilson.”

Small, as has been already seen, was an accomplice of Spencer. Various circumstances, which have been grouped together with great force in the defence of Commander Mackenzie before the court-martial, directed the suspicions of the officers towards Cromwell. Both of these persons were accordingly placed under arrest, on the 28th of November. The anxieties of the officers continued to increase. The crew gathered, from time to time, in knots. Spencer was observed endeavouring to hold intelligence with some of them. On the 30th of November, four others, McKie, McKinley, Wilson, and Green, were placed under arrest.

* Descending from the gravity of the text, we may be permitted to express our astonishment, that, among the various attempts of a malevolent press to throw odium and ridicule upon Commander Mackenzie, no allusion has been made to the paper in Greek characters, which was, in part, the foundation of the proceedings against Roderick Random on shipboard. “ What you are pleased,” says he, “ to call ciphers are no other than Greek characters, in which, for my amusement, I kept a diary of every thing remarkable that has occurred to my observation, since the beginning of the voyage, till the day on which I was put in irons.” “ A very likely story ! ” cried Mackshane ; “ what occasion was there for using Greek characters, if you were not afraid of discovering what you had wrote ? ”

The prisoners, now amounting to seven, were all confined on the quarter-deck. Owing to the contracted dimensions of the brig, there was no other place on board, which was more secure against an attempt at a rescue. But here it was difficult to prevent them from communicating with each other, and they interfered essentially with the management of the vessel. At the time they were confined, it was the evident intention of the commander to take them to the United States, to be delivered up to the justice of their country. To effect this desired object, he was considered by the Court of Inquiry to have tried every measure that a brave, prudent, and skilful officer could adopt. But, during the confinement of the prisoners, sullenness, discontent, inattention to duty, disobedience to orders, often — as seamen know, and naval records establish — the precursors of open acts of violence, were manifested by the crew.

Feeling the necessity of immediate action, and desiring all the counsel the officers of the vessel could give him, in the very responsible situation in which he was placed, the commander, on the 30th of November, addressed to his officers a letter, in which he called upon them to take into deliberate and dispassionate consideration the present condition of the vessel, and the contingencies of every nature throughout the remainder of the cruise, and to furnish him their united counsel, as to the course proper to be pursued. Immediately on the receipt of this letter, they assembled in the ward-room, and commenced the examination of witnesses. These were duly sworn, and their testimony written down, and subscribed by each witness, after it had been read over to him. The officers passed the whole day in the performance of this duty, without interruption and without food. The commander remained in charge of the deck, with the three young midshipmen on constant duty. On the morning of Thursday, the 1st of December, the officers again assembled in the cabin, and, after a further consultation, addressed the commander the following letter, expressing their unanimous opinion, that the safety of the brig required the immediate execution of Spencer, Cromwell, and Small.

“ U. S. Brig Somers, December 1, 1842.

“ Sir : In answer to your letter of yesterday, requesting our counsel as to the best course to be pursued with the prisoners,

Acting Midshipman Philip Spencer, Boatswain's Mate Samuel Cromwell, and Seaman Elisha Small, we would state, that the evidence which has come to our knowledge is of such a nature, that, after as dispassionate and deliberate a consideration of the case as the exigency of the time would admit, we have come to a cool, decided, and unanimous opinion, that they have been guilty of a full and determined intention to commit a mutiny on board of this vessel of a most atrocious nature, and that the revelation of the circumstances having made it necessary to confine others with them, the uncertainty as to what extent they are leagued with others still at large, the impossibility of guarding against the contingencies which 'a day or an hour may bring forth,' we are convinced that it would be impossible to carry them to the United States, and that the safety of the public property, the lives of ourselves, and of those committed to our charge, requires that (giving them a sufficient time to prepare) they should be put to death, in a manner best calculated, as an example, to make a beneficial impression upon the disaffected. This opinion we give, bearing in mind our duty to our God, our country, and to the service.

"We are, Sir, very respectfully, your obedient servants,

"GUERT GANSEVOORT, Lieutenant.

"R. W. LEECOCK, Passed Assistant Surgeon.

"H. M. HIESKELL, Purser.

"M. C. PERRY, Acting Master.

"HENRY ROGERS, Midshipman.

"EGBERT THOMPSON, Midshipman.

"CHARLES W. HAYS, Midshipman."

And now we advance to the conclusion of this melancholy affair. The commander concurred in the opinion of his officers. The three chief mutineers were the only persons capable of navigating the vessel, and their execution would leave the rest without knowledge or confidence. By their execution, the very eye of the mutiny would be put out, and the monster left dispirited to grope in darkness.

We will not dwell on the painful scene which ensued. The three prisoners were executed on the 1st of December, 1842, in latitude $17^{\circ} 34'$, and longitude $41^{\circ} 34'$. At the time of the execution, the brig was, by the log, five hundred and twenty-five miles distant from St. Thomas, at which place she arrived on the 5th of December.

Previous to their death, Spencer and Small both confessed their guilt, in the presence of the officers and crew, and acknowledged that their punishment was just. Spencer added, that he had attempted a mutiny on board the two

national vessels in which he had last sailed, and that his piratical propensity was a sort of mania.*

On his arrival at New York, Commander Mackenzie asked for a Court of Inquiry on his conduct. This court was composed of three officers, than whom none are more distinguished in our naval service ; Commodore Stewart as president, Commodore Dallas, and Commodore Jones. With these the Hon. Ogden Hoffman was associated as Judge Advocate ; and it is not too much to say, that his character and peculiar fitness for the post added to the consideration to which the court was entitled. They were authorized to inquire into all the facts touching the alleged mutiny on board the *Somers*, and the conduct of Commander Mackenzie in ordering the execution of Spencer, Cromwell, and Small, and to report to the Department their opinion as to the right and propriety of those proceedings. During nineteen days, they faithfully and laboriously examined every officer, seaman, and apprentice, belonging to the *Somers*, with the exception of ten of the crew who were in confinement. Their unanimous opinion was as follows.

"That a mutiny had been organized on board the United States brig *Somers*, to murder the officers and take possession of the brig.

"That Midshipman Philip Spencer, Boatswain's Mate Samuel Cromwell, and Seaman Elisha Small, were concerned in, and guilty of, such mutiny.

"That, had not the execution taken place, an attempt would have taken place to release the prisoners, murder the officers, and take command of the brig.

"That such attempt, had it been made in the night, or during a squall, would, in the judgment of the Court, from the number

* Just before his execution, Spencer requested that he might be shot. In refusing this wish, the commander was justified by the usage of the navy. An officer of eminent rank in the navy is sentenced to be shot ; but an inferior officer, or seaman, is hanged at the yard-arm. Whereas, in the army, a soldier is shot for a military offence, unless in the case of spies. The reason assigned for this distinction would hardly be recognized as valid in the navy. It is, that death by being shot is less ignominious than hanging, and more befitting a man who is continually exposing his life for his country. See *Delafons on Naval Courts-Martial*, p. 271. But do not the sailor and officer in the navy equally expose their lives for their country ? A more reasonable cause of the difference would seem to arise from the inherent difficulty of carrying a sentence by shooting into execution on board a ship at sea, and the facility for the other mode of execution afforded by the ropes and yards.

and character of the crew, the small size of the brig, and the daily decreasing physical strength of the officers, occasioned by almost constant watching and broken slumbers, have been successful.

"That Commander Mackenzie, under these circumstances, was not bound to risk the safety of his vessel, and jeopard the lives of the young officers and the loyal of his crew, in order to secure to the guilty the forms of trial; and that the immediate execution of the prisoners was demanded by duty and justified by necessity.

"The Court are further of opinion, that throughout all these painful occurrences, so well calculated to disturb the judgment and try the energy of the bravest and most experienced officer, the conduct of Commander Mackenzie and his officers was prudent, calm, and firm, and that he and they honorably performed their duty to the service and their country."

Before the communication of this opinion to the Secretary of the Navy, he caused the commander of the *Somers* to be arrested on a charge of murder. There were three specifications, all of which were but variations of one and the same charge, that the execution was directed and carried into effect without justifiable cause. A Court-martial was convened, at the navy-yard in Brooklyn, for the trial. It consisted of the following officers; Commodore John Downes, president; Commodore George C. Read; Captains William C. Bolton, Daniel Turner, John D. Sloat, Joseph Smith, George W. Storer, Isaac McKeever, Benjamin Page, John Gwinn, Thomas W. Wyman; Commanders Henry W. Ogden, Irvine Shubrick. The Judge Advocate was William H. Norris, of Baltimore.

They commenced their sessions on the 2d of February, 1843. After the Judge Advocate had concluded the reading of the charges and specifications, Commander Mackenzie rose and said, "Spencer, Cromwell, and Small were put to death by my order; but to the charges and specifications I plead not guilty." He was allowed counsel; and Mr. Griffin, Mr. Duer, and Mr. Sedgwick acted in this capacity. The Court was occupied in the hearing of this cause for upwards of forty days; a longer period, we are disposed to believe, than was ever before consumed by any such proceeding in naval annals.* By their final report,

* The momentous trial of Admiral Byng commenced the 28th of December, 1756, and continued till January 27th, 1757.

Commander Mackenzie was *honorabley acquitted* of all the charges and specifications preferred against him by the Secretary of the Navy ; and their judgment has since been *confirmed* by the President of the United States.*

And now we close this rapid sketch of the course of events in this important affair. After the prompt and decided opinion of the Court of Inquiry, the honorable acquittal by the Court-martial, and the confirmation thereof by the President, it may seem superfluous for us to undertake to add another word, even by way of explanation. The country has spoken through its constituted organs, and their justice cannot be rejudged. But the hardihood of public opinion, and the voice of slander, disregard the formal judgments of courts ; and there are not a few, who, with audacious hands, would venture to lift these “anchors” of the law.† It is to be regretted, that it did not fall within the province of the Judge Advocate before the Court of Inquiry, or that he did not deem it proper, to state what he understood to be the rule of law, by which the responsibility of Commander Mackenzie was to be determined. Such an enunciation might have gone further towards tranquillizing the public mind than a formal judgment, of which it may be said, perhaps, that it sometimes silences without convincing the understanding.

The reports, which we have been able to see, of the proceedings before the Court-martial, are so imperfect, partly from the secrecy of their deliberations, that we cannot judge with confidence of the nature of the counsel, which the Judge Advocate, on this occasion, in his character of legal adviser, deemed it his duty to give to the court. So far, however, as we may venture to judge of what we know so imperfectly, it appears to us unworthy of the magnitude of the occasion, and unjust towards Commander Mackenzie. Some of the questions started, and the spirit in which the trial was conducted, seem to show a greater aptness for the niceties of *Nisi Prius*, than for the comprehension of the generous

* The language used by the President in the *confirmation*, particularly when taken in connexion with a statement in the official journal at Washington, is supposed to be peculiar and novel. We have not time to enter upon an inquiry into this point. See *Law Reporter* for May, 1843, p. 47.

† *Judicia enim anchora legum sunt, ut leges reipublicæ.* Bacon de Aug. Scient., Lib. VIII. c. iii. Aph. 73.

principles and modes of proceeding, which should govern a cause of this character. It may be added, that the Judge Advocate did not seem at his ease in the performance of his duties. It was his misfortune, that, being invited to take charge of a prosecution, the conduct of which was to draw the observation of the nation, and to become a precedent hereafter, he did not enjoy a national reputation, so as to receive in advance the confidence of the people. It appears from the certificates, which he felt obliged to publish,* that his friends commend him for "a professional reputation standing as high as that of any other man of his age in the State," and as well known for honor and integrity of character in Maryland. It is doubtful, if, in other States, however it might be in his native commonwealth, his ears would be greeted by the "*οὐτος ἔξιντος*," which was so sweet to Demosthenes. It was, perhaps, a fault in the Secretary of the Navy, from whom the appointment of Judge Advocate proceeded, that he did not select, for the eminent duties of this trial, some person whose character, experience, and learning were calculated to inspire the confidence of the whole country.

There is another circumstance connected with these proceedings which ought not to be passed over in silence. We allude to it with extreme reluctance, unwilling to touch any of those chords, never to be touched in wantonness and indifference, which tremble in a parent's breast. The language of the defence seems to suggest,† what has been asserted by the press, that an influence had been exerted against Commander Mackenzie by the distinguished father of one of the offenders. It appears further, that Mr. Butler and Mr. O'Connor, eminent members of the bar, expressly requested to be allowed to appear before the court, in behalf of the relatives of this offender, to take part in the proceedings, to examine and cross-examine the witnesses produced, and to offer suggestions to the court; and that Mr. Butler gave the Judge Advocate "two papers of questions for witnesses." It further appears, from the state-

* Certificates to vouch a professional reputation, as if it were a medicine, are so distasteful in their nature, and so contrary to the usage of the bar, that we were not sorry to be obliged to descend for them to the columns of the *New York Herald*, where they seem to have first seen the light.

† p. 21.

ment of the Judge Advocate under oath, that Mr. Spencer, the Secretary of War, wrote an opinion on the course to be adopted at a certain stage of the trial ; though it is added, that it was not read to the Judge Advocate till the occasion to which it applied had gone by ; and further, that the Judge Advocate received from Mr. Spencer “through the hands of Mr. Morris, *three questions he wished put to a witness.*” It would seem, therefore, that the suggestion in the defence was not entirely without foundation. Far be from our country and our age that ferocious virtue of ancient Rome, which taught one father to preside at the execution of his two sons condemned for treason,* and another, by his unaided voice, to order the instant death of a brave and generous child, who, contrary to the mandate of the dictator, had joined in single and successful combat with one of the chiefs of the enemy.† Still, we cannot but think, that the conduct of Mr. Spencer would have been more in harmony with that reserve, in which the inmost feelings of our nature find shelter, if he had abstained from all interference with the proceedings. It is impossible to measure the influence which his temper and conduct have had on the public mind ; and it may not be an undue assumption to attribute, in some part, to these causes the disagreeable imputations to which Commander Mackenzie has been exposed.

The commander was aided in his defence by counsel, to whose fame we can contribute nothing by what we might say in their praise. Perhaps, we should not say too much, if we suggested, with deference to their great learning and their perfect knowledge of the cause, that they do not appear to have occupied, to the full extent, the grounds of law on which the defence naturally rested. They commence with the position, that, “in judging of the necessity of the execution, it is of vital importance to ascertain preliminarily, whether a mutinous conspiracy in fact existed on board the *Somers*, and whether the persons executed were parties to that conspiracy.” This proposition is divisible into two parts ; *first*, as to the existence of the mutiny ; *secondly*, as to the guilt of the persons executed. In certain aspects of the case, we can conceive it not unimportant to be able to establish both parts of this proposition ; but it seems to us, that this is not essential to a complete justification

* Livy, II. 5.

† Ib. VIII. 7.

of Commander Mackenzie. If we are right, the learned counsel, with the gallantry of another profession, threw away a shield to which their client was entitled.

We venture with diffidence upon the discussion of a question which has opened the field for such animated debate.* It is acknowledged that Commander Mackenzie has taken the lives of three men without the customary forms of law. Does the law contain, within itself, any principle, which, under the circumstances of the case, will justify this apparent violation of it? Our answer is, that it clearly does.

We assume the existence of a mutiny, or mutinous conspiracy, on board the *Somers*, as established by evidence beyond a doubt. Laying aside, for the present, all question as to who were the partakers in this guilt, or as to the necessity of their execution, we begin by inquiring, What were the duties imposed upon the commander by this event? Of course, to suppress the mutiny, protect the lives of his officers and crew, and save the ship which had been committed to his charge. But the law does not impose extraordinary duties, without conferring at the same time, co-extensive powers, or means for the performance of the duties. It does not enjoin upon its servants arduous exertions, without, from its ample armory, intrusting them with weapons adequate to the difficult purpose. These will differ much from the powers to be exercised on ordinary occasions. We will not undertake to decide the question, whether a national ship, on the high seas, in time of peace, and in the absence of mutiny or disturbance, is under the rule of the municipal law or of the martial law. But, however this may be in ordinary circumstances, we cannot doubt that, by the mutiny on board the *Somers*, this ship was placed, for the time being, in a state of war. It was as if the enemy were at the gates, or rather already within the walls, of the city. “*Domicatum est enim non magis cum hostibus, quam, quæ dimicatio major atque periculosior est,*

* Several questions connected with this case have been started by an ingenious writer in the *Law Reporter* (No. for May 1843), reputed to be a late distinguished law-officer of one of the States. He seems, however, not disposed to undertake to resolve the doubts he raises. He could hardly have borne in mind the saying of Lord Bacon, not more conspicuous in philosophy than in law, whenever he directed to the latter his great powers, that we should “open the law on doubts, not open doubts on the law.”

*cum proditione ac perfidiâ sociorum.”*** Amid the sound of arms, the ordinary municipal law, which might before have controlled the duties and responsibilities of officers, became silent.† *Martial law prevailed.* By the course of events, the commander was invested with a duty not unlike that of the dictator,‡ *to see that the ship received no detriment.* The law, that laid on his shoulders the burden of these transcendent powers, required in his case, as in many other instances where it imposes duties, only their honest and conscientious exercise to the best of his abilities. In the flagrant proof of the existence of the mutiny, and the melancholy circumstances by which he was surrounded, he might read legibly, as in a warrant of the law, the customary *formula* of that instrument — “*for which these shall be your warrant*” — and proceed, without fear of the future, to the execution of a citizen.

It is a principle of the common law, — and probably a principle of universal law, for it has its foundations in natural equity, — that a person having judicial authority will be protected by the law in all cases where he has exercised it honestly and conscientiously, even though grievous error may have occurred. This principle is to be found in the earliest records of our jurisprudence, and is upheld by an unbroken series of decisions. The reason of it has been succinctly stated by a distinguished judge of our country.§ “*Judicial exercise of power,*” he said, “*is imposed upon the courts. They must decide and act according to their judgment;* and,

* Livy, I. 28.

† “I can conceive of cases,” says Lord Mansfield, “in time of war, in which a governor would be justified, though he acted very arbitrarily, in which he could not be justified in time of peace. Suppose during a siege, or upon an invasion of Minorca, the governor should judge it proper to send an hundred of the inhabitants out of the island from motives of real and genuine expediency: or suppose upon a general suspicion he should take people up as spies; upon proper circumstances laid before the court, it would be very fit to see whether he had acted as the governor of a garrison ought, according to the circumstances of the case.” *Mostyn v. Fabrigas*, Cowper’s Reports, I. 174.

‡ It is said that the first cause of creating a dictator, was the fear of a domestic sedition. Liv. II. 18, 29. III. 20. Cic. de Leg. III. 3.

§ Mr. Chief Justice (afterwards Chancellor) Kent, in the case of *Yates v. Lansing*, Johnson’s Reports, Vol. V. p. 291. This point is discussed by Mr. Wirt, in the defence of Judge Peck on his impeachment; a forensic effort to which we cannot allude without expressing our admiration of its ability, its learning, and its eloquence. See Peck’s Trial, p. 492.

therefore, the law will protect them." The rule was expressed another time in more technical language.* "Therefore, by the law of England," said Lord Mansfield, "if an action be brought against a judge of record for an act done by him in his judicial capacity, he may plead that he did it as a judge of record, and that will be a complete justification."

Analogous to this in principle, is the justification of the commander of the Somers. The character cast upon him was at once *judicial* and *executive*. He was to judge and to execute. The judicial authority does not depend on the ermine or robe. It may be muffled even under a military cloak.

The vivid language of Mr. Erskine in one of his greatest efforts† is pertinent to our purpose, though applied by him to proceedings by impeachment.

"I say that the extraordinary jurisdiction by impeachment ought never to be assumed to expose error, or to scourge misfortune; but to hold up a terrible example to corruption and wilful abuse of authority by extra legal pains. If public men are always punished with due severity, when the source of their misconduct appears to have been selfishly corrupt and criminal, the public can never suffer when their errors are treated with gentleness. From such protection to the magistrate, no man can think lightly of the charge of magistracy itself, when he sees, by the language of the saving judgment, that the only title to it is *an honest and zealous intention*. If at this moment, or, indeed, in any other in the whole course of our history, the people of England were to call upon every man, in this impeaching House of Commons, who had given his voice on public questions, or *acted in authority, civil or military*, to answer for the issues of our councils and *our wars*, and if *honest single intentions* for the public service were refused as answers to impeachments, we should have many relations to mourn for, and many friends to deplore. For my own part, I feel, I hope for my country, as much as any man that inhabits it; but I would rather see it fall, and be buried in its ruins, than lend my voice to wound any minister, or other responsible person, however unfortunate, *who had fairly followed the light of his understanding and the dictates of his conscience for their preservation*. Gentlemen, this

* *Mostyn v. Fabrigas*, Cowper's Reports, Vol. I. p. 172.

† Speech on the trial of the printer, John Stockdale, for a libel. Erskine's Speeches, Vol. I. p. 374.

is no theory of mine ; it is the language of the English law, and the protection which it affords to every man in office, from the highest to the lowest trust of government. God forbid that a magistrate should suffer from an *error in judgment, if his purpose was honestly to discharge his trust.*"

Without intending to apply the language of Mr. Erskine, or the analogy derived from the immunity of the judicial character, rigidly to the matter before us, we are prepared to assert, that the legality of the means employed by Commander Mackenzie in suppressing the mutiny may be judged by the answer to the simple question, whether, under the circumstances of the case, he acted honestly, to the best of his judgment, and without any corrupt motive, or wilful thought. But, in giving this effect to the motives of the commander, we assume that the mutiny had acquired such foothold as to cause reasonable and well-grounded apprehensions for the safety of the ship. In other words, there must have been an *apparent necessity* for a resort to *extraordinary* means to arrest the mutiny. There must have appeared to be no other alternative, equally consistent with the safety of all. In characterizing this necessity as *apparent*, rather than real, we adopt the distinction which lies at the foundation of the right of self-defence.* The consideration of this distinction will throw additional light on the rule by which the responsibility of Commander Mackenzie is to be judged.

But what is the right of *self-defence*? It is a right founded in the law of nature. It springs from the character of man. It is one of the essential elements bound up in his being. It had its origin in the instincts of humanity, and is ratified by the calm judgments of reason. It is older than books, for it was born when the pulsations of the heart began. It is broader than civilization or law, for it is com-

* Not distantly connected with this is the question, When, if ever, one person would be justified, in case of shipwreck or other great calamity, in taking the life of his companion in order to save his own. The recent interesting case of the *William Brown*, where the mate threw a number of persons into the sea, is an illustration of this point. A short time after the precipitate act, a sail came in sight, though at the time of the act it seemed unreasonable to expect such happy succour. It would appear, therefore, that the company in the boat did not act under the promptings of a certain, inevitable, and overwhelming necessity; but only of an *apparent* necessity. On some future occasion we hope to be able to consider at length the case of the *William Brown*.

mon to the whole human family. The language of the great Roman orator and lawyer is as true now as when it was employed in the defence of Milo.* “ *Est igitur hæc, judices, non scripta, sed nata, lex : quam non didicimus, accepimus, legimus, verum ex naturâ ipsâ arripuimus, hausimus, expressimus ; ad quam non docti, sed facti, non instituti, sed imbuti sumus ; ut, si vita nostra in aliquas insidias, si in vim, si in tela aut latronum aut inimicorum, incidisset, omnis honesta ratio esset expediendæ salutis. Silent enim leges inter arma.*”

A right so important, which, in its exercise, may override the ordinary municipal law, can only be employed under circumstances of a peculiar character. It is like the sword, suspended in the temple in ancient times, which could only be taken down on a great emergency. The law, which sanctions this right, limits and guards its exercise. It is not on every occasion of anxiety, or fear of imagined danger, or impending harm, that a person will be justified in taking the life of a citizen. But the law, while careful to restrain the right within its natural limits, recognizes its force on every just and proper occasion. What, then, is a just and proper occasion for its exercise? We answer, Whenever a person of ordinary firmness and courage, has *reasonable grounds* to believe his life in danger; or, according to another form of expression, whenever it *appears* that he can save his own life only by the sacrifice of that of another. It is not necessary that the danger should in *reality* be imminent; it is sufficient, if there are reasonable grounds to believe that there is a design to destroy life, although it should afterwards appear that no such design existed.†

* *Pro Milone.* § 4.

† We are unwilling that a distinction, so important to our purpose, should be left merely on the assertion of the text. The language of Blackstone on this point lacks precision. (Blackstone's Com. Vol. IV. pp. 180, 184.) An apparent cause for firing was treated by Mr. Justice Trowbridge as a valid justification of the British soldiers, for killing certain persons March 5, 1770. (See Chandler's Crim. Trials, pp. 406, 411.) The distinction was accurately expressed by Mr. Justice (afterwards Chief Justice) Parker as follows; “ When from the nature of the attack there is reasonable ground to believe that there is a design to take his life or commit any felony upon his person, the killing the assailant will be excusable homicide, *although it should afterwards appear that no felony was intended.* To illustrate this principle, take the following case. A., in the peaceful pursuit of his affairs, sees B. rushing rapidly towards him, with an outstretched arm, and a pistol in his hand, and using violent menaces against his life as he advances. Having approached

This is the rule of municipal law, derived from numerous authorities, and applied to cases between citizens on the land. It was recognized in our country as long ago as the trial of the soldiers for what has been called the Boston Massacre ; and was accurately defined by the court, after learned and acute discussion at the bar, in the trial of Selfridge for the killing of Austin. There are many reasons, why the rule might receive a more enlarged and vigorous application in the case of the soldier, than in that of the citizen. We will, however, only allude to one. As the soldier is bound to maintain his *post* and his *arms*, it would seem that, in the defence of these, he would be justified in resorting to the same extreme measures by which he might protect his life.

Applying this rule to the circumstances of the Somers, it will be needful to the legal justification of the Commander only to establish the existence, at the time of the execution, of an *apparent* danger to the ship, or to the lives of his officers and crew. It should be such a danger as seemed to him, in the exercise of his best judgment, to threaten fatal results, unless arrested by instant and extraordinary exertions. We repeat, that, in strictness of law, it is not requisite for him to go further than this. And we present this view of the case, not because we believe that the necessity, under which he acted, was not at once real and *apparent*, but because we are anxious to define what seem to be the proper legal grounds of defence. In this view, the question to be asked is not, whether, looking at the circumstances of the case from the vantage-ground of the present time, it was in reality possible

near enough, in the same attitude, A., who has a club in his hand, strikes B. over the head before, or at the instant the pistol is discharged, and of the wound B. dies. It turns out that the pistol was loaded with *powder only*, and that the real design of B. was only to *terrify* A. Will any reasonable man say, that A is more criminal than he would have been if there had been a bullet in the pistol? Those who hold such doctrine must require, that a man so attacked, must, before he strike the assailant, stop and ascertain how the pistol is loaded." (Trial of Selfridge, p. 160.) The Scotch law corresponds with this. It is to be found in Mr. Alison's admirable work on the *Criminal Law of Scotland*, and it is a source of no little pleasure to meet the author of the history of the French Revolution in another department of intellectual labor. The right of self-defence, he says, arises " where there is personal violence of such a kind as may reasonably seem to endanger life," p. 20; " where an officer has reason to conclude that his life shall come to be in hazard," p. 29; " in case of reasonable necessity," p. 38.

to carry the prisoners to St. Thomas, or to the United States ; but, whether, *at the time of the execution*, it did not *appear* impossible to do it, without imminent danger to the ship and all on board.

And this leads us to an important consideration. In determining the existence of this *apparent* necessity, we are to banish from our minds all knowledge or impressions derived from recent results or evidence ; we are to carry ourselves back to the morning of December 1st, 1842, and to the actual point of time when the execution took place ; we are to put ourselves in the position of the commander ; to scan the countenances of the crew ; to note the signs of disaffection ; to breathe the atmosphere of distrust. We are, with him, to examine the narrow accommodations afforded by the brig, and to consider the difficulty of preventing communication between the prisoners and the crew ; and, finally, with him we are to listen to the unanimous recommendation of his officers, that Spencer, Cromwell, and Small should be put to death.

As it is not in our power to place ourselves actually in this situation, it is important that we should employ the means, which, after personal observation, are best calculated to give us an accurate impression of the appearance of things at the time of the execution. In the first place, we are to consider the size of the *Somers* ; and here the opinion of Mr. R. H. Dana, Jr., who so happily unites in his own person the apparently incompatible experience of the seaman and the lawyer, is entitled to the highest consideration :

“ I must say no one ought to form an opinion upon the issues of this conspiracy without first seeing the *Somers*. You would hardly believe your eyes, if you were to see, as the scene of this conspiracy, a little brig, with low bulwarks, a single narrow deck, flush fore and aft, and nothing to mark the officers’ quarters, but a long trunk-house, or *companion*, raised a few feet from the deck, to let light and air in from below, such as you may have seen in our smaller packets, which ply along the sea-board. You feel as though half a dozen resolute conspirators could have swept the decks, and thrown overboard all who opposed them before aid could come from below. And in coming on deck, (which seemed to me more fearful than any thing else in the officers’ condition) the officers would have to come up the

steps, and through the small companion scuttles, at which a couple of men could easily have cut them down, or shot them as they appeared In short, no one, at all acquainted with nautical matters, can see the *Somers* without being made feelingly aware of the defenceless situation of those few officers."

Having the appearance of the *Somers* in our mind, we are prepared to listen to the evidence with regard to the mutiny of which she was the scene. The persons on whom we naturally rely for testimony as to the condition of things on board a ship, are the officers. There can be no reason why those of the *Somers* should be disqualified from being witnesses. Examine them ; they all concur in expressing their belief, entertained not only at the time of the execution, but down to this day, in the actual existence of a formidable mutiny, in the guilt of Spencer, Cromwell, and Small, and in the necessity of their execution as a means of securing the command of the ship to the lawful authorities. They describe the appearance of the crew ; they repeatedly speak of the "indescribable something," the disobedience to orders, the sullenness, which were tokens of the mutinous disposition. It is trifling with human testimony to say, that the ship was not at least in *apparent* danger, when all the officers join in testifying to its existence. On the testimony of these men, we leave this part of the subject. It would be impossible, without unreasonably drawing upon the patience of the reader, to sift the various circumstances attending the mutiny, and estimate their weight and importance as evidence of danger to the ship. And we are less disposed to do it, because we should be obliged to repeat something of what we have already presented in our narrative of the mutiny. The field, moreover, has been so fully occupied by the counsel of the commander, as to leave scarcely so much as a straw for the gleaner.

In estimating the danger to which the ship was exposed, we must not close our eyes upon the light derived from the history of past mutinies. At this stage of our remarks, we can do no more than invite attention to the illustration to be derived from this source. With such warnings as we have already introduced into our pages, no Commander can properly hesitate to adopt the most prompt and energetic measures. He must be mindful, that the mutiny, swift as an armed man, may spring upon the unsuspecting officers,

and that, while he hesitates for a moment, the irrevocable blow will be struck. Above all things, he will make great exertions, and incur burdensome responsibilities, rather than allow the flag intrusted to his guardianship to be displaced by the black bunting of the pirate. It is a duty, than which none lies nearer the heart of a faithful commander, to preserve his ship sacred for his country, that no flag may float from its mast-head but the ensign of the Republic, that its sleeping thunder may never be awakened except in the cause of Right.

Looking, then, at the circumstances of this case, by the best lights within our reach, we cannot hesitate to express our conviction of the necessity, at once real and apparent, under which the commander acted. And this brings us to the distinct question, whether it is incumbent on him to proceed further in his justification, and establish the *actual* guilt of each one of the three persons executed. It seems to us, most clearly, that this is not essential to his justification in any point of view; certainly it is not requisite to his legal justification. The utmost that can be required of him is to establish the *apparent* guilt of these persons. But even this is not imperative. And here we conclude, as we began, this portion of the argument, by saying that it is sufficient, if it be shown that the Commander, in taking the steps that he did towards the suppression of the mutiny, acted in good faith, even supposing subsequent knowledge may have made it evident that he erred in judgment. In this respect, his situation differs materially from that of the citizen, who takes the life of another in self-defence. He is summoned by necessity to take extraordinary steps for the safety of the ship. The law that has invested him with such sudden and indefinite powers to meet a peculiar emergency, considers properly all the circumstances of the occasion. It does not expect from him on the deck of a man-of-war, and in the midst of the ocean, the protracted deliberations of a court of justice, nor a nice balancing of suspicions and evidence. It further considers wisely the infirmity of human nature, and its liability to error. But over all errors of judgment, under such circumstances of necessity, it throws its ample shield. Whatever the commander does, we repeat again, *in such an emergency, in good faith, and in the conscientious discharge of his duty,*

believing it to be necessary to the safety of his ship, or of the lives of those on board, receives the protection of the law.

It is on this ground, that the many instances, in the history of the world, of extraordinary military punishment, under peculiar circumstances, may be justified ; as by the suspicions under which parties have fallen, or by the impossibility of discovering the real offender, and the necessity of making an example. Thus, it has not unfrequently happened, that the leader of a forlorn hope, or other officer in the heady current of battle, has, with his own arm, struck down the soldier who seemed to shrink from his post. In all these cases, the justification is found in the conscientious discharge of duty, under the apparent necessities of the occasion.*

In our examination of this matter thus far, we have, for the most part, followed a course of argument different from that so ably occupied by the counsel of Commander Mackenzie. We have forborne all inquiry into the guilt of Spencer, Cromwell, and Small, believing that it is irrelevant to the determination of the merits of the defence. If we are right in this view, it may be justly regretted, that, in the protracted proceedings of the Court-martial, so much time was consumed on this question. The effect of this was, to widen the field of inquiry beyond the requirements of law.

We should do wrong, however, to close our remarks without one glance at a matter, which has been deemed by many so important. It is with regard to the *actual* participation of Cromwell in the mutiny, that the chief question has been raised. The concurring opinion of the officers at the time, marking him as one of the leaders, indeed as the *dux facti*, establishes at least *apparent* guilt, though it may not be manifested by facts susceptible of narration or evidence. In a matter like this, we are bound to adopt the convictions of those who were on the spot, and saw with their own eyes, and heard with their own ears, all that passed. It would be impossible to add to the admirable

* The practice of *decimation* in the Roman armies was sustained by the same apparent necessity. “*Statuerunt enim ita majores nostri, ut si a multis esset fligitiuum rei militaris admissum, sortitione in quosdam animadverteretur; ut metus videlicet ad omnes, pena ad paucos perveniret.*” Cicero pro Cuentio, 46. In Tacitus, we find that it did not even consider the *actual* guilt of the party. “*At quidam insolentes peribunt. Nam et ex fuso exercitu, cum decimus quisque fusti feritur, etiam strenui sortiuntur.*” Annal. XIV. 44.

force, with which all the circumstances in the various testimony bearing on this point have been presented by the counsel of the Commander. And it must be difficult for any one, after reading their argument, to entertain a doubt of the actual guilt of Cromwell. There is no opportunity for hesitation with regard to the guilt of the other two, as both confessed it previous to their execution. The earlier years of Spencer's short life seem to have afforded gloomy prognostications of his destiny. When a student at Schenectady College, where he was probably imbued with some of that knowledge which he afterwards employed in his Greek ciphers, his favorite reading was in books of piracy. His imagination was smitten by the stories of the heroes of crime. He talked of them among his companions. A longing grew in his breast to figure as a great criminal. We have understood, from an authentic source, that, while on board the *Potomac*, he detailed piratical projects similar to those which were afterwards arrested by the promptness and energy of Commander Mackenzie on board the *Somers*. He had gone so far as to determine the dress which he should adopt as the captain of a pirate ship. Upon the memory of the unfortunate dead we would not cast an unnecessary weight of reproach ; but the character of Spencer enters as an essential ingredient into the case of the *Somers*. Of him it may be said, that he seemed

“ Worthy to be a rebel ; for, to that,
The multiplying villanies of nature
Did swarm upon him.”

The judgment of the Court-martial, by which Commander Mackenzie was honorably acquitted of the charges and specifications against him, stands on the immovable foundations of law. But we should not convey our strong convictions of its justice, if we did not add our opinion, that it cannot fail to be ratified by every unprejudiced mind.* Through the confusion and obscurity, which prejudice and ardent discussion have thrown over this subject, this judgment will appear, like the country's flag revealed in the smoke of battle. Does any one in his heart believe, that

* We cannot doubt, what we have understood, that the opinion of officers of the British navy on this question is in accordance with that of the

the conduct of the Commander was not justified by the circumstances in which he was placed ? Who would have asked him, with the history of former mutinies in his memory, to brave the dangers of delay for yet another hour ? Let such person, if such there be, picture to himself the possible fate of the Commander, before the sun had gone down on the first day of his irresolution. The officers, weary with watching, are sprung upon by the crew fresh from undisturbed repose. Perhaps they are thrown into the sea, which closes over their uncoffined bodies. Perhaps, in an open boat, with a few biscuits and a single jar of water, they are set adrift, and at last, through various vicissitudes, worn with suffering, with nothing left to sustain them but hope, arrive in their country, to tell their melancholy story. Meanwhile, the swiftest ship of the navy, from its armament and its build apt at once for attack and escape, has fallen into the hands of a pirate. Like a baleful meteor, it shoots over the troubled ocean, with unwonted fears perplexing the navigation of the world. It arrests the commerce of the country, floating on every sea ; it fastens upon one of those stately ships, those "pageants of the sea," laden with costly merchandise ; and the gentle vessel, gay with the presence of the beautiful and cherished of the land, bearing to foreign shores wives in the fresh morning of a husband's love, and maidens the light and joy of happy household hearths ; or homeward bound with long-expected travellers, who have garnered up the rich harvest of learning, and science, and art among the ancient scenes of Europe, becomes the pirate's prey. When these tidings reach home, where shall the Commander of the *Somers* hide his head ? To him the country will call for the ship once intrusted to his charge, with stronger feeling than was implied even in those words of anguish wrung from the Roman emperor, — "Varus, restore my legions."

Honor, then, to the commander for the courage and prompt-

Court-martial. We should not allude to this circumstance, except to counteract an impression, that has been carefully circulated to the contrary. An English article has been printed in our papers, on the mutiny of the *Somers*, as from the "United Service Journal," whereas it was from the "United Service Gazette," a paper of an inferior character. It was probably attributed to the *Journal* for the malicious purpose of giving it authority and currency.

titude he displayed, and the service he has rendered to his country ! He has done more than gain a battle, and deserves more than the homage of admiration and gratitude with which we greet the victor returning from successful war. We thank him, and the country thanks him, that he did not hesitate ; that, just and firm of purpose, with a soul full of tenderness, he did not allow the sacred regard for human life, nor the wicked machinations of conspiracy, nor the fear of evil tongues at home to shake his solid mind. But is there nothing to excite regret in all that he has done ? We wish we could bring our remarks to an end without alluding to a paper, which, in justice to the subject, cannot be passed over in silence. The most important document, illustrative of the mutiny, is the official communication of the Commander to the government. It is said that this was prepared in great haste, and under the pressure of anxiety and care. We doubt if ever a good cause, towards which the hearts of the people inclined with instinctive admiration, received greater detriment from any single document or circumstance, than that of Commander Mackenzie from his official narrative. Few have read it without being pained by some things in the dreary recital of what he addressed to the prisoners previous to their execution, and especially by the recommendation of his officers for promotion. We revere the austere firmness, which executed justice alike upon the educated son of a Minister of State, and the humble untaught sailor ; but we shrink from the excess of professional spirit, which seems for a moment to have forgotten the milder feelings of the man, and which asked promotion at the hands of the government for those whose courage aided in the just but melancholy act. It was not with triumph that he should have presented himself before his country ; rather with humility and sadness, for he had taken the life of a citizen. At the thought of the fate of that young man, the heir to distinguished talents in two generations, and bearing the commission of his country, the feelings of gratulation, even in the overthrow of the plottings of a pirate, and the rescue of a national ship, ought not to find utterance ; the lustre of success is obscured by the sacrifice ;

“ The pomp is darkened and the day o’ercast.”

It was not in a communication calculated to inflame the pru-

rient taste of the people, that this dread offering to necessity and law should have been announced ; but in words few and significant, and expressive of the grief of him by whose orders it had been done ; for he who has slain a man, however justly, is not to be envied.* But we should fail in justice to this paper, if we did not record our admiration of the frankness and loyalty to truth, companion virtues to the courage that saved the *Somers*, evinced, even in those passages which we could most wish to blot, by the minute relation of circumstances which are little favorable to the writer.

On other occasions Commander Mackenzie, by not undistinguished services, has won an enviable fame. He has, by more than a single trial, proved himself brave, disinterested, and humane. In our navy, an officer of his lofty character and unaffected singleness of heart must find many opportunities for honorable and useful service. And when he again descends upon the sea, we shall doubtless hear, as we have heard before, of the affectionate attachment which he inspires among his brother officers, and of the auspicious influences which he exerts over those under his command. Let us add, in conclusion, that to us Commander Mackenzie is an entire stranger. We have long honored him for his contributions to the literature of the country, and none the less, because, while following the profession of arms, he has found time to cultivate the arts of Peace. It is a source of no little satisfaction, that one who wears the laurel with such gentle mien should know so well how to employ the sword.

* The Commander says well in his despatch, that it was the most melancholy act which an officer of the navy had ever been called to perform. To reconcile him to the recollections of such a tragedy, he will lean upon what is firmer than fame, the consciousness of duty done. Plato, in his *Gorgias*, the dialogue which Cicero read so diligently at Athens, and by which he was taught chiefly to admire its great author, puts in the mouth of Socrates words of striking application to the situation of the Commander.

"*Socrates.* We should not envy those who are not to be envied, nor the wretched, but pity them. *Polus.* What of that? do you think this is the case with the men I am speaking of? *S.* Yes; for how can it be otherwise? *P.* Whoever, therefore, slays whom he may have seen fit to slay seems to you, does he, to be wretched and pitiable? *S.* No, indeed, not to me; nor yet to be envied. *P.* Did you not a moment since say he was wretched? *S.* He who has slain a man unjustly — yes, my friend, and to be pitied besides; but *he who has done it justly, is not to be envied.*"